

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

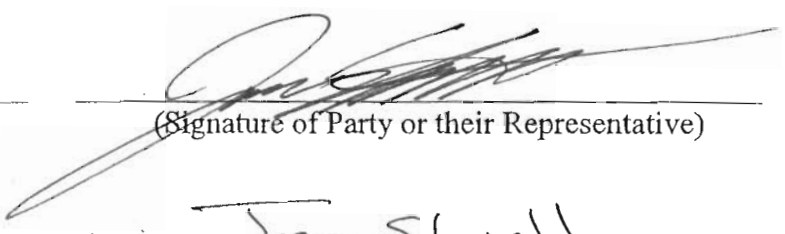
Civil Action No. 06-227

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 2 COPIES OF AO FORM 85.

4-6-06
(Date forms issued)


(Signature of Party or their Representative)

Jason Stowell
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MIRIAM HYMAN,

Plaintiff,

v.

CHILD, INC.,

Defendant.

)
) C.A. NO.:
)
)
)
) TRIAL BY JURY DEMANDED
)
)
)

COMPLAINT

1. Plaintiff, Miriam Hyman, is an adult African American individual who resides at 1825 S. 23rd Street, Sigel Side Entrance, Philadelphia, PA 19145.
2. Defendant, Child, Inc. is a Delaware corporation with an address of 507 Philadelphia Pike, Wilmington, Delaware, 19809-2177

JURISDICTION AND VENUE

3. This is a proceeding for declaratory and injunctive relief and monetary damages to redress the deprivation or rights secured to plaintiff by 42 U.S.C. §1981, as well as a breach of a contract claim and a common law claim brought pursuant to state law.
4. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1343(3) and 1343(4), conferring original jurisdiction upon this Court of any civil action to recover damages or to secure equitable relief under any Act of Congress providing for the protection of civil rights. The Court's pendent jurisdiction of claims arising under Delaware law is invoked pursuant to 28 U.S.C. 1367(a).
5. Venue lies in this Court pursuant to 28 U.S.C. §1391 because defendant is subject to personal jurisdiction in this district.

FACIS

6. On or about March 23, 2005 plaintiff, an African American, began employment with Child Inc. in the capacity as a part-time Child/Youth Service Worker at the Governor Charles L. Terry Jr., Emergency Home for Children and Youth.
7. As a part time employee Plaintiff was paid \$10.00 per hour and was not provided, nor made eligible, for any other employment benefits, such as health care, retirement plan, etc, which benefits are offered to full time employee of the defendant.
8. The terms of the employment contract dictated that plaintiff would not work more than 25 hours per week, but in case of special need, not work more then 35 hours per week.
9. After completing her initial two week training period, despite the terms of employment, Plaintiff was always scheduled to work more then 25 hours per and at no time worked less than 30 hours per week and on several occasions worked more than 40 hours per week.
10. Plaintiff never complained about the scheduled hours, was otherwise a good employee and was always willing to give the extra effort towards her employer.
11. On or about May 25, 2005 Plaintiff, while performing her job duties at the Governor Charles L. Terry Jr., Emergency Home for Children and Youth was assaulted by a 13 year old male resident.
12. As a result of the injuries she received Plaintiff determined that she wished to immediately press assault charges against the youth. However, her supervisor's at Child, Inc. advised her that the policy of the employer was not to bring charges against residents

and that Child, Inc. would not support her in taking such action

13. Subsequent to Plaintiff's termination Danielle Clayton, a Caucasian Child/Youth Service Worker filed a "criminal" complaint against a female resident, that is believed to be Hispanic, for a similar "incident" with a resident that occurred after the incident with Plaintiff in which Plaintiff had raised the issue of such a filing with Child, Inc. Ms Clayton suffered no adverse employee action as a result of her filing a charge.
14. Plaintiff felt that something needed to be done regarding the improper behavior of the resident and when Child, Inc. Failed to take any steps to address the residents inappropriate behavior she went ahead and on June 7, 2005 and pressed charges.
15. On or about May 27, 2005 Plaintiff wrote a letter to her supervisors at the Governor Charles L. Terry Jr., Emergency Home for Children and Youth, Robbie MacDonna and Nicole Russo. That letter requested, for the first time that plaintiff be permitted to work the part-time hours for which she had been hired in order that she be allowed to fulfill an prior commitment which she had undertaken prior to her employment with Child, Inc. and which Child, Inc. was aware of at the time she was hired. Defendant never responded to the request.
16. On or about June 3, 2005, without cause or reasonable justification Child, Inc. terminated Plaintiff's employment on an immediate basis.

COUNT I.

RACIAL DISCRIMINATION UNDER 1981.

16. The averments of paragraphs 1 through 15 are incorporated by reference as if fully set forth at length.
17. Defendant's action constitute a violation of 42 U.S.C. 1981.

WHEREFORE, Plaintiff requests legal and equitable relief including:

- a) injunctive relief against further acts of discrimination and requiring Defendant to provide employment discrimination training to its employees;
- b) front pay;
- c) back pay with interest;
- d) compensatory damages for Plaintiff's humiliation, anxiety, emotional distress, costs for therapy and medication, lost wages and benefits;
- e) punitive damages;
- f) attorneys fees and costs.

COUNT II.

BREACH OF CONTRACT

- 18. The averments of paragraphs 1 through 17 are incorporated by reference as is fully set forth at length.
- 19. Defendants breached the terms of its employment contract with Plaintiff by requiring her to regularly work more than the maximum hours per week allowed as set forth in her employment agreement and then in the first instance that Plaintiff requests that she be allowed to work only the part-time hours for which she was employed, immediately terminating her employment without cause or reasonable justification.

WHEREFORE, Plaintiff requests that the Court enter judgment in her favor and against Defendant awarding Plaintiff damages arising as a result of the breach, including attorneys fees and costs and such other relief as the Court deems just and necessary under the circumstances.

COUNT III

BREACH OF THE STANDARD OF GOOD FAITH AND FAIR DEALING

20. Paragraphs 1 through 19 are incorporated herein by reference.
21. Defendants discharge or termination of Ms. Hyman was a breach of the public policy of the State of Delaware and was therefore, a breach of the covenant of good faith and fair dealing implied in her employment contract.
22. As a direct and proximate result of the breach of the covenant of good faith and fair dealing implied in its contract with Ms. Hyman by defendant, Ms. Hyman has suffered, is presently suffering and will continue to suffer lost income and benefits, lost future wages, loss of professional stature, emotional pain and suffering, humiliation, inconvenience, mental anguish, loss of enjoyment of life and other pecuniary and non-pecuniary losses.
23. Defendants wrongful misconduct was malicious, reckless, willful and wanton. Defendants are therefore liable to Ms. Hyman for punitive damages

WHEREFORE, Plaintiff requests that the Court enter judgment in her favor and against Defendant awarding Plaintiff damages arising as a result of the breach, including punitive damages, attorneys fees and costs and such other relief as the Court deems just and necessary under the circumstances

NOLTE & ASSOCIATES



R. STOKES NOLTE, ESQUIRE

ID No. 2301

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Wilmington, DE 19805

(302) 777-1700

Attorney for Plaintiff

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Minam Hyman

(b) County of Residence of First Listed Plaintiff Philadelphia
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorney's (Firm Name, Address, and Telephone Number) Shokes Nolk
Nolk Associates, 1010 N. Benavolt Hwy, Suite 21
Wilmington, DE 19805 (302) 777-1700

DEFENDANTS

CHILLO, INC.

County of Residence of First Listed Defendant New Castle
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | |
|---|--|---|--|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 DEF <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret Inc Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. 1981

Brief description of cause:

Wrongful Termination based on Race

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____